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DIRECTORATE-GENERAL ENVIRONMENT

Directorate D – Implementation, Governance and Semester

ENV.D.3 – Enforcement, Cohesion Policy and European Semester, Cluster 3

Head of Unit

Brussels, **27. 06. 2016**

ENV.D.3/AV/ip/CHAP(2015)2239

Mr William O' Connor

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Dear Mr O' Connor,

Subject: CHAP (2015)2239 complaint regarding the Mulkear LIFE Project in Ireland

Thank you for your letter of 16 February 2015 that we registered as a complaint under the above-mentioned reference number. In your letter you complain about several aspects of the Mulkear LIFE project "*Restoration of the Lower Shannon SAC (Mulkear River) for Sea Lamprey, Atlantic Salmon and the Eurasian Otter*", which was partly funded by EU LIFE funds. The project took place on the Mulkear River which forms part of the Lower Shannon Special Area of Conservation (SAC). The purpose of the project was to bring about a significant and sustained enhancement of the Lower Shannon SAC targeting the species of Atlantic salmon, Sea lamprey and European otter. More specifically the project aimed to enhance the salmon and Sea lamprey populations by restoring degraded habitat in river reaches along the Mulkear River using best practice techniques in instream habitat rehabilitation. However, in your view, the project became another pressure on this Natura 2000 site and instead of bringing benefits it caused damage to the integrity of the Lower Shannon SAC.

In June 2015, the Commission services addressed all of your points raised in your complaint with the Inland Fisheries Ireland (IFI) who is the Coordinating Beneficiary (CB) of the LIFE07 NAT/IRL/000342 – IShannonSACLAE0. Additional questions were asked on 3 November 2015 on technical and financial issues and the CB's reply was received on 4 December 2015. The responses received have been reviewed by our external technical monitoring officer (TMO) of the LIFE program and assessed in general as satisfactory. The only aspect that could not be verified by the TMO (without a visit to the location) was the presence/absence of a functioning Lamprey pass at Annacotty Weir. As these are plastic structures being affixed to an existing concrete structure in a major river, then it is not unreasonable to expect them to get damaged from time to time. This is acknowledged by the CB who confirmed that there is an ongoing monitoring and maintenance programme in place for this. The CB has been advised to post an up to date photograph of the sea lamprey pass *in situ* in the river on its website.

Please see below the detailed responses of the CB Inland Fisheries Ireland to each of the points raised in your complaint together with our assessment and conclusions.

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| Complaint letter date: Issue No: | 16-Feb-15 1 |
| Issue raised by complainant: | <i>"The overall project should have been subjected to Appropriate Assessment"</i> . |
| Response from the Beneficiary: | <p>The Mulkear LIFE Project took account of EC and National guidance in relation to Article 6 of the Council Directive 92/43/EEC (the Habitats Directive). In particular, in the consideration of a project affecting a Natura 2000 site, as outlined in the stages of the guidance for the Article 6(3) and (4) procedures, (EC, 2002), where a plan or project is directly connected to or necessary for the management of the site, and is unlikely to have significant effects on the Natura 2000 site, appropriate assessment is not required.</p> <p>The projects undertaken by Mulkear LIFE were directly connected with and necessary to the management of the Lower Shannon SAC. The management measures implemented were developed for conservation purposes and directly targeted at improving the distribution/range of features of interest of this SAC.</p> <p>As outlined in Habitats Directive whereas it is appropriate, in each area designated, to implement the necessary measures having regard to the conservation objectives pursued. Specific and separate Appropriate Assessment Screening assessments were carried out for the Mulkear River Restoration Plan, the Ballyclogh Rock Ramp and the Upgrade of Ballyclogh Weir. These assessments concluded that no significant impacts from the proposed works were foreseen. The upgrading and enhancement projects were initiated to deal directly with the Conservation Objectives of this SAC as detailed in NPWS 2012 Conservation objectives of Lower Shannon SAC, including assisting to achieve the outlined targets/notes on individual targets for the following features of interest for this SAC</p> <p>Specifically, the complaint refers to lamprey species and the issues relating to Appropriate Assessment. As a result lamprey species are discussed in detail below, highlighting the features of interest and the conservation objectives of the Lower Shannon SAC:</p> <p>Sea Lamprey- In NPWS (2012) the distribution target for the SAC conservation objectives is stated as greater than 75% of main stem length of rivers accessible from estuary. It also states that artificial barriers can block or cause difficulties to lampreys' upstream migration, thereby limiting the species to lower stretches and restricting access to spawning areas. Specific barriers serve to constrain the upriver migration of sea lamprey. The upper extent of the SAC in the River Fergus is delineated by a barrier to migration. Barriers are also present in the Mulkear and</p> |

Feale (NPWS, 2012).

As outlined in NPWS (2013) (Article 17 reporting) the single largest pressure acting on adult sea lamprey is that of artificial physical barriers to passage for upstream-migrating adult fish. The concentration of spawning effort downstream of the first major weir on many of Ireland's major sea lamprey rivers indicates a problem with passage (Gargan *et al.*, 2011). Barrier removal or modification to permit upstream migration would permit a greater penetration of river channels by adult fish and a greater dispersal of spawning effort, with consequent increased downstream extent of habitat for ammocoetes to colonise. NPWS (2013) also states that the current (sea lamprey) range is not sufficient to support the long term viability of the species, due to the extent to which aggregation of spawning effort is located downstream of the first major barrier to passage in so many Irish rivers, e.g. the Slaney, Barrow, Nore, Suir and Lower Shannon (on the Feale, Fergus, Mulkear). "As the current range represents only 71% of the Favourable reference range it is considered Inadequate – Bad" (NPWS,2013).

The Range of the species (sea lamprey) is considered to be currently well below the Favourable Reference Range and visual evidence of spawning habitat and recording of ammocoetes of other species clearly indicate a substantial extent of suitable habitat beyond the current recorded range (NPWS, 2013). The reporting under Article 17 of the Habitats Directive also states that the habitat is not restricting the range expansion for this species and is considered favourable. But, the conservation status of the sea lamprey is considered bad in view of barriers and passage issues and in view of low population levels recorded.

Brook / River Lamprey - In NPWS (2012) where detailing the conservation objectives of the Lower Shannon SAC specifically in relation to distribution and the percentage of river accessible; the target for brook lamprey is outlined as having access to all water courses down to first order streams. It also states that artificial barriers can block or cause difficulties to brook lampreys' migration, both up and downstream, thereby possibly limiting the species to specific stretches and creating genetically isolated populations.

It was outlined in the complaint that "Significant adverse effects on the populations of *Petromyzon marinus* (Sea Lamprey) [1095] and *Lampetra fluviatilis* (River Lamprey) [1099] in the Lower Shannon cSAC were realised during the implementation of this project." An Appropriate Assessment screening assessment was carried out by Mulkear Life Team in consultation with the project steering group, project partners; Limerick County Council, Office of Public Works and National Parks and Wildlife Service and other statutory authorities and it was determined that there would be "no anticipated negative impact" on Brook and River Lamprey. Specifically in relation to sea lamprey the AA screening stated that "the

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| | <p>partial removal of the weir and the installation of the rock ramp will likely provide sea lamprey spawning sites above and below the weir in future years and will provide significant habitat for ammocoete”.</p> <p>Ballyclogh Weir</p> <p>It is clearly outlined in the Conservation Objectives of the Lower Shannon SAC (NPWS, 2012) and in the Article 17 reporting that the presence of weirs on the Mulkear are impacting on the range, and availability of habitat for lamprey species and in particular sea lamprey. In addition, this barrier is man-made structure that was negatively impacting on the distribution protected species. The partial removal of it also assisted in reducing the impacting of the structure on the natural hydromorphology of the catchment, which is a supporting element to Ecological Status of the Water Framework Directive. As outlined in (EC, 2000) member States have to adopt the conservation measures necessary to achieve the general aim of the directive as set out in its Article 2(1): ‘The aim of this directive shall be to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies’. Mulkear LIFE therefore had an obligation to ensure the features of interest have access to the potential favourable range within the SAC. In addition, “Article 2(2), in particular, specifies the objective of the measures to be taken under the terms of this directive: ‘Measures taken ... shall be designed to maintain or to restore, at a favourable conservation status, natural habitats and species of wild fauna and flora of Community interest’ (EC, 2000).</p> <p>The Mulkear LIFE project initiated the removal of the weir at Ballyclogh following an 15 month consultation with statutory authorities in Ireland including Inland Fisheries Ireland, Limerick County Council, Office of Public Works and the National Parks and Wildlife Service specifically to assist in fulfilling of targets set out in the conservation objectives of the Lower Shannon SAC for lamprey species detailed in (NPWS 2012). Comprehensive monitoring of migrating species was carried out over a number of years and in particular prior to the commencement of the works in July 2013, along with an Appropriate Assessment screening which did not foresee negative impacts on lamprey. To the contrary beneficial effects were foreseen, particularly in relation to sea lamprey distribution targets.</p> |
| Assessment by the Commission services | <p>The competent authority NPWS is part of the project's Steering Group and has been actively involved in every stage of the planning and delivery of this project. Article 6 of the Habitats Directive excludes the need to have appropriate assessment when the project or plan is directly connected with or necessary to the management of the site. Mulkear LIFE project intended to upgrade the existing weir on the Mukear River by replacing the existing dysfunctional fish pass and Sea lamprey pass and by upgrading of fish passage facilities. Therefore, it appears that the Mulkear LIFE project was directly connected with the management of</p> |

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| | <p>the site and an appropriate assessment under Article 6(3) of the Habitats Directive was not required. In any case, Appropriate Assessment Screening assessments were carried out for the Mulkear River Restoration Plan, the Ballyclogh Rock Ramp and the Upgrade of Ballyclogh Weir. These assessments concluded that no significant impacts from the proposed works were foreseen. The detailed response by the IFI clarifies the procedures taken and clearly demonstrates that the actions were in line with the conservation objectives of the site. Based on the information available to the Commission, we do not possess any evidence to conclude otherwise. For that reason, since we have not identified a breach of Habitats Directive, it is proposed not to pursue this point further at this time.</p> |
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| Complaint letter date: | 16-Feb-15 |
| Issue No: | 2 |
| Issue raised by complainant: | <i>"We are concerned that the original LIFE funding application did not include all the works that were eventually undertaken within the Lower River Shannon SAC. We are also concerned that LIFE funding was made available to a project that facilitated damage to this Natura 2000 river."</i> |
| Response from the Beneficiary: | <p>The original LIFE grant agreement contained the 36 actions requiring completion under the project. Following discussions on a project modification with EU since 2012, new identified actions were submitted under the modification request application and the following extra programme of works were agreed with the European Commission. An amendment to the grant agreement was approved in 2013:</p> <ol style="list-style-type: none"> 1) New Action C10: Removal of Major Fish Barrier on the Mulkear River at Ballyclogh Weir. 2) New Action C13: Installation of Dipper Boxes & Artificial Kingfisher Nesting Boxes / Tunnels. 3) New Action D8: Production and Delivery of a DVD ON Mulkear Life <p>The modification request was also necessary to complete the original in-stream actions. In 2012, no instream works could be carried out due to the extreme flood/water levels experienced and this weather had a negative impact the project timelines. All of the original actions were carried out, with the exception of Action C8- "Replacement of coniferous forest with natural broadleaf vegetation along stretches planted with coniferous forest" and E7 "Monitoring of practicalities and recovery of riparian zone by replacement of coniferous trees with native broadleaf and open spaces" which were discontinued in agreement with the EC. No additional actions beyond the Grant Agreement were undertaken.</p> <p>In some of the educational and information dissemination actions the targets were exceeded through the Environmental Education Programme</p> |

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| | <p>with schools, training workshops with agencies and community groups and the establishment of the Mulkear Conservation Volunteers.</p> <p>This project was part funded (50%) by the EU with the remaining 50% funded by Inland Fisheries Ireland, Limerick County Council, Office of Public Works and National Parks and Wildlife Service for a total fund of €1,740,818.</p> |
| Assessment by the Commission services | <p>It is not clear from your complaint to which additional works you are referring but we assume that you meant the additional works carried out at Ballyclogh Weir, which was included as a project action as part of a project amendment. You have not substantiated how these additional works have cause damage to the Natura 2000 site concerned. For this reason, it is proposed not to pursue this issue further at this time.</p> |

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| Complaint letter date: | 16-Feb-15 |
| Issue No: | 3 |
| Issue raised by complainant: | <p><i>“In May 2010 Mulkear LIFE radio-tagged 50 sea lamprey adults on their spawning grounds below Annacotty Weir on the River Mulkear. Many of these lampreys were already engaged in spawning activity when this work was undertaken. This resulted in severe disturbance to the 2010 spawning population.”</i></p> |
| Response from the Beneficiary: | <p>Sea Lamprey is one of the qualifying interests in a number of Special Areas of Conservation (SACs) in the Republic of Ireland under the EU Habitats Directive. One of these, the Lower River Shannon SAC, comprises a number of catchments where sea lamprey spawning occurs. Weirs in the lower section of the Mulkear River, one such catchment in this designated area, present a potential obstacle to upstream migration, with extensive spawning noted annually downstream of the lowermost structure, at Annacotty (Kelly and King 2001; Igoe <i>et al.</i> 2004).</p> <p>The Mulkear Life project identified three barriers to migration that would require modification to ease passage of this species (A background to these man-made structures on the Mulkear River is seen in Appendix I.). As part of the Mulkear LIFE project radio-tracking was undertaken in 2010 and in 2011 to determine the delays in sea lamprey migration due to barriers, the response of lampreys to extended delays below barriers and where accent was achieved, determine how the barriers were navigated. The radio-tracking study was also designed to determine, the duration and pattern of the upstream migration, the preferred tributaries and habitats on route and how spawning beds were selected. The radio tracking in 2010 and 2011 showed that Annacotty and Ballyclogh weirs were significant obstacles to lamprey passage and hindered access to spawning areas of the river (Rooney <i>et al.</i>, In press).</p> |

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| | <p>The Mulkear LIFE project planned a program of instream rehabilitation works to restore degraded habitats throughout the catchment. It also presented an opportunity to monitor sea lamprey behaviour and passage success at weirs on the Mulkear River, both before and after experimental barrier modification. The tagging work was conducted under a (S14) licence granted to Dr. Sean Rooney of Inland Fisheries Ireland, with associated permissions granted by the Health Products Regulatory Authority (formerly the Irish Medicines Board). Sean Rooney holds a degree in zoology from Trinity College Dublin and a PhD in mammal ecology from University College Dublin. He is currently employed as a technician with IFI Research Division, based in City West (joined September 2003). Attached to the Habitats Directive Monitoring Unit, he is involved in a number of research projects including the tracking of fish movements using telemetry. He has previous history of successful licencing under Cruelty to Animals Act (1876) to undertake surgical implantation/attachment of small tracking devices to various fish species in the wild. He is in possession of a licence issued by Dept. of Health (ref: B100/3770) valid until June 2016. He is fully proficient with minor surgical techniques required for fish telemetry and has over 11 years of practical fish-handling experience from my current role as a field scientist.</p> |
| <p>Assessment by the Commission services</p> | <p>The CB presents full justification and methodology used for tagging the sea lamprey adults and reports that the work was done under licence by a highly qualified and expert. Your complaint has not provided any scientific evidence to support your claim that the project resulted in severe disturbance to the 2010 spawning population. For this reason, it is proposed not to pursue this issue further at this time.</p> |

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| <p>Complaint letter date: Issue No:</p> | <p>16-Feb-15 4</p> |
| <p>Issue raised by complainant:</p> | <p><i>"In 2011 Mulkear Life installed "lamprey passes" at Annacotty Weir, and one of the weirs upstream from here (Ballyclogh Weir). From the outset Mulkear Life claimed that this pass was a success and that it could be effectively used by sea lampreys, and set out to prove this favourable outcome. [...] However no actual scientific data has been produced to date which can explain the mechanism by which sea lampreys use this pass, and under what lows and temperatures this pass is effective."</i></p> |
| <p>Response from the Beneficiary:</p> | <p>The Mulkear LIFE project's main objective towards sea lamprey was to improve migration upstream past man-made structures. The project team researched international trials and methods to incorporate into the existing barriers to achieve better migration. The trials on the Mulkear were based on the groundbreaking research carried out by Dr. Ulrich</p> |

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| | <p>Reinhardt in relation to the climbing behaviour of lamprey over inclined surfaces ((Reinhardt et al, 2008), (Reinhardt et al, 2009), (Adams & Reinhardt, 2008) and also (D’Aguiar, 2011). Dr Reinhardt was contacted because of his experience in this area. At that time he was working on the design of eel ladders for lamprey to trap and sort migrating adult sea lamprey. This system http://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1583&context=fishpassage_conference uses an inclined surface with pegs to assist sea lamprey climb an inclined surface.</p> <p>Based on Dr Reinhardt’s initial design MulkearLIFE’s project team developed a design to assist sea lamprey pass existing weirs on the Mulkear. An Ennis based company; Enform Plastics Limited played a major role in the manufacture of the fish pass. Enform Plastics was selected by MulkearLIFE to manufacture hardened ABS plastic substrata sheets. MulkearLIFE installed the new sea lamprey passes on the problematic Annacotty and Ballyclogh weirs in late April and early May 2011.</p> <p>The installation of these lamprey passes resulted in an easement of sea lamprey passage through the retrofitting and modification of weirs and the customisation of these and other obstacles to facilitate passage. This success of these works was confirmed by extensive monitoring to determine the success of sea lamprey passage pre and post works. Two passes were installed on the face of Annacotty weir in April 2011. A single pass was installed at Ballyclogh weir in early May 2011. At Annacotty the passes have been providing passage for over 90% of all those sea lamprey on the Mulkear River, since 2011.</p> |
| Assessment by the Commission services | The CB presents the background and justification to the selection of the methodology used and reiterates that the lamprey passes have facilitated passage for over 90% of all sea lamprey since 2011. At this moment, we do not possess any scientific information to conclude that the “lamprey passes” have not been effective or served its purpose. For this reason it is proposed not to pursue this issue further. |

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| Complaint letter date: Issue No: | 16-Feb-15 5 |
| Issue raised by complainant: | <i>“The most significant issue that we want to raise however is that in June – July 2013 Mulkear LIFE undertook a month of major instream works during the sea lamprey spawning season.”</i> |
| Response from the Beneficiary: | The works that Mulkear LIFE was undertaking at this time were the preparatory work for and the actual partial removal of Ballyclogh Weir, so it is assumed that the complaint is referring to this project action. |

Background

Ballyclogh weir is a man-made structure located on the banks of the Mulkear River, in Ballyclogh Townland, Ballyvarra, Co. Limerick. The weir is the 2nd major obstacle encountered by Atlantic salmon and sea lamprey on their annual spawning migration. The weir is located approximately 3,6 kms from the confluence with the River Shannon and is 1.4kms upstream from Annacotty weir. Approximately 500m downstream is the crump weir which is equipped with a fish counter but, this does not pose a barrier to either of MulkearLIFE's target fish species.

Ballyclogh weir was equipped with a step-pool fish pass to aid Atlantic salmon migration. It must be noted that the partial removal was carried out on an existing breach that took place years before. The existing 8 metre breach made the fish pass inoperable. The weir had been a recognised area of illegal fishing activity and this was of particular concern to Mulkear LIFE, IFI and local anglers. As a result of this fishing for salmon and trout, fishing, by any means, is prohibited to a distance of 50 metres below the weir on the left hand bank. Migrating Atlantic salmon were held up in shallow pools below the weir and were illegally removed from this area through various forms of illegal activity. The proposed work was designed to facilitate Atlantic salmon and sea lamprey migration and remove the threat of illegal fishing activity.

The work consisted of the replacement of the existing dysfunctional fish pass and temporary sea lamprey pass (on the eastern end of the weir) and the upgrading of fish passage facilities. This would provide a mechanism for improved fish passage. The planned work would provide enhanced access for a wide range of fish species and other aquatic species found in the Mulkear. In place of the removed section of weir, an elongated rubble mat was created. The Water Inspectorate of the Department of the Environment favoured an elongated rubble mat design over the construction of a rock ramp fish pass design, as this would not remedy the loss of productivity due to the impoundment effect of the weir and would not fully restore river continuity. The elongated rubble design would ensure migration of fish species at all times and fully restore the productivity of the impounded section and river continuity.

MulkearLIFE and its project partners; Inland Fisheries Ireland, Limerick County Council, Office of Public Works and National Parks and Wildlife Service followed appropriate procedures at all times in undertaking the work to facilitate fish passage at Ballyclogh Weir. The two main target species of MulkearLIFE, Atlantic salmon and sea lamprey both of which are featured interests of the Lower Shannon SAC, have benefited significantly from the work.

This work was undertaken after 15 months planning and consultation. This included consultation with, coupled with site visits by, many of the

leading fish pass design and instream river restoration experts in Ireland. It included extensive monitoring work and a comprehensive Appropriate Assessment screening. This report included an extensive assessment of the potential impacts of the proposed work. The report was undertaken in the period January 2012 to March 2013 but included related research and monitoring work from 2009, 2010 and 2011.

Significant monitoring and observational work above and below the site of the work was carried out. This included comprehensive and detailed sea lamprey monitoring work on site, and above and below the site, in 2010, 2011, 2012 and from May 2013 onwards.

Timing of the works

No instream works were carried out in June 2013. The instream works commenced after the main sea lamprey spawning season had taken place as this had been carefully monitored during the previous three years and in 2013. In 2013, the season commenced on the 2nd June and was almost complete by the 21st June 2013 and was completely finished by the 8th July. No sea lamprey spawning occurs directly below Ballyclogh Weir as the habitat is inadequate for spawning.

The temporary lamprey pass sheets were removed after the spawning season on the 8th July and prior to the instream work taking place. The access track works commenced on 3rd July and weir works initially commenced on the 9th July but the machinery was subsequently moved to the counter crump weir to assist Inland Fisheries Ireland in carrying out repairs to the deepest channel. The Office of Public Works commenced annual leave at this stage and returned to the Ballyclogh Weir site on 19th July. In order to confirm these details a full list of audited costs and corresponding dates relating to the works can be submitted upon request. It should be noted that these costs are already in the financial forms that have been submitted to the EC.

Water quality was monitored to observe if there was silt dispersal in the immediate area. No significant quantities of silt resulted from the works. Sea lamprey monitoring took place during the works via snorkelling and passage remained clear at all times for fish species during the works. No sea lamprey were present during these surveys. The works were complete by 16th August 2013. Four trees were also removed to gain access to the river bank. Hedging and trees were planted after the completion of the works.

The work at Ballyclogh Weir has been deemed an outstanding success by all members of the Project Advisory Group including all parties that are statutory consultees for the instream works under the Habitats Directive Article 6. The works have opened up 184km of sea lamprey habitat. The number of sea lamprey redds observed above Ballyclogh weir in walkover survey work in the catchment has increased from 55 observed

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| | <p>in 2012, to 83 in 2013 to 294 in 2014 (Maps 1-3). Many of these redds were multiple use redds, some with up to seven sea lamprey.</p> <p>The achievement of sea lamprey passage at Annacotty and Ballyclogh weirs represent a major milestone for all those concerned with the conservation status of sea lamprey in Ireland. It is a significant development in terms of sea lamprey conservation in an Irish and European context. The partial removal of Ballyclogh weir and the design of a substrate to successfully pass sea lamprey is a major achievement. The partial removal and installation of the elongated rubble mat also improved the migration opportunity for salmon and reduced the capability of poaching below the weir thus giving a greater protection to the species. These enhancements are a significant conservation success for the features of conservation interest in the Lower Shannon SAC and will help restore the depleted populations of these migratory species in the catchment.</p> |
| Assessment by the Commission services | <p>The CB presents a full account of the background to the issue and describes thoroughly the measures taken to ensure that there was minimal disturbance during the operation to remove the weir. It appears that the project Advisory Group, which included the statutory consultees, is content with the final outcome. In addition, it appears from the reply that no Sea lamprey spawning occurred directly below Ballyclogh Weir as the habitat was inadequate for spawning. On the contrary, maps presented in the CB's response showed evidence of increased Sea lamprey spawning upstream of this modified weir. Therefore, based on the information provided by the IFI and by your complaint, we cannot conclude that the works undertaken in June/July 2013 caused severe impact on Sea lamprey spawning season. For this reason, it is proposed not to pursue this issue further.</p> |

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| Complaint letter date: | 16-Feb-15 |
| Issue No: | 6 |
| Issue raised by complainant: | <p><i>“Ballyclogh Water Mills date from 1750-1770 and is a large complex of regional cultural heritage importance. The destruction of part of the weir by Mulkear LIFE was undertaken in the absence of a supervising conservation specialist or monitoring archaeologist and as such was not historically or archaeologically recorded. This is considered to be a significant negative impact.”</i></p> |
| Response from the Beneficiary: | <p>Ballyclogh Weir is not a listed or protected structure. A barrier assessment of Ballyclogh Weir took place on Ballyclogh Weir in February 2012 and site study visits took place on the Nore River rock ramps. In 2013, the Mulkear LIFE project was advised that the weir was being considered for listing by Limerick County Council. Engagement with heritage conservation officers of Limerick County Council and the national monument service was undertaken from that point and at the development planning stages. Site meetings were held with the heritage</p> |

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| | <p>and conservation planning officers and all works were endorsed. The Ballyclogh Mill structure was a category of special interest; Architectural Technical. Ballyclogh Weir is not listed under Limerick County Councils development plan for protected structures.</p> <p>Considering the previous breach and collapse in addition to the undercutting that was taking place, conservation work to underpin the structure by remediating the effects of scour was necessary. This was achieved through the filling in of deep pools immediately below the weir face to provide a scour barrier. A trash guard was also fitted. The work did not result in any material change to the remaining weir. The Department of Environment engineer was consulted to ensure:</p> <ul style="list-style-type: none"> a) The retained section of the weir would be secure; b) The removal of the base layer, dysfunctional fish pass and eastern portion of the weir could be done in a manner that both facilitated fish passage; and helped convey flood events; c) Satisfactory works for bank protection on both banks and on the retained western weir section. <p>Consulting engineers were engaged to produce the relevant development design options, which were determined by the Department of Environment Engineer. The Department of Environment Engineer inspected the works on 5th September 2013 and was satisfied that they were completed in accordance with his recommendations and approved design.</p> |
| Assessment by the Commission services | <p>The CB reported that the weir is not a listed or protected structure and confirmed that they went through a full consultation including site meetings with relevant authorities. The work was formally approved by the Department of the Environment. The notion of "likely significant effect" is linked to the effect of a plan or project on integrity of Natura 2000 sites; in your complaint you do not substantiate your claim how the destruction of part of the Ballyclogh Weir has impacted the Lower Shannon SAC. The issue of heritage value is not within the scope of EU environmental law and is purely a national matter. For this reason, it is proposed not to pursue this issue further.</p> |

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| Complaint letter date: | 16-Feb-15 |
| Issue No: | 7 |
| Issue raised by complainant: | <p><i>“When construction works were completed at Ballyclogh Weir it is not clear what happened to the valuable stone that was removed from the weir structure. However the material used for the temporary access road was illegally dumped some 3 km upstream alongside the river and within the boundary of the SAC.”</i></p> |
| Response from the Beneficiary: | <p>During the partial removal all stone materials were used in the enhancement project and no new stone was introduced into the stream that could potentially cause sedimentation impacts. Any viable stone</p> |

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| | <p>from this section of the weir was used to infill part of the large deep pool below the weir, a known poaching hotspot, to alleviate the congregation of salmon in large numbers during migration. A quantity of the temporary access road material was used to improve and facilitate access and car parking at Hall Road entrance. Five loads of unused material were provided to a local angling Club, Mulkear Anglers, to make improvements to a car park, following a request from the club. The remaining material was reused for another access track for machinery to carry out bank protection work.</p> |
| <p>Assessment by the Commission services</p> | <p>The CB details what was done with the material removed from the weir structure and this has been viewed by the TMO at mission. We do not possess enough information from your complaint on the alleged illegal dumping upstream alongside the river. Nevertheless, the whole operation has been approved by the various statutory consultees (including NPWS) and we do not possess any evidence to confirm your claims regarding the alleged illegal dumping. For this reason, it is proposed not to pursue this issue further.</p> |

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| <p>Complaint letter date:</p> <p>Issue No:</p> | <p>16-Feb-15</p> <p>8</p> |
| <p>Issue raised by complainant:</p> | <p><i>“It must be noted again that sea lamprey passage problems in the Mulkear Catchment have not been solved. Below Ballyclogh Weir there are two barriers to migration. The first barrier is Annacotty Weir and Mulkear LIFE’s lamprey passes are no longer present here. The second barrier upstream is a crump weir below Ballyclogh Weir which is also likely to be a significant barrier to migration but was ignored by Mulkear LIFE as this weir is run by Inland Fisheries Ireland – Mulkear LIFE’s parent entity.”</i></p> |
| <p>Response from the Beneficiary:</p> | <p>At Annacotty Weir the lamprey tiles/passes have remained in place. When a flood event or debris damages a tile it is replaced with a new tile when the water levels dictate. It is an ongoing maintenance issue due to the natural impacts of the river, but Inland Fisheries Ireland is committed to ensuring this essential maintenance is carried out. A number of additional lamprey tiles have been purchased to continue to provide sea lamprey passage at this location into the future. Discussions are currently taking place with the IFI Research and Development department to develop a more permanent solution for the passes.</p> <p>Fish passage was considered in the crump weir development, this is a counting weir for Atlantic salmon and sea trout fish (3 channels) with a fourth separate channel which is a baffled eel/lamprey pass. The results of the sea lamprey passage monitoring are evidence of passage past this structure upstream to Ballyclogh Weir. This weir was not ignored by the Mulkear LIFE project and all weirs assessed were part of the consultation with the National Barriers Group.</p> |

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| Assessment by the Commission services | The CB has clarified that the lamprey tiles do get damaged from time to time and have to be replaced. As these are plastic structures being affixed to an existing concrete structure in a major river, then it is not unreasonable to expect them to get damaged from time to time. This is acknowledged by the CB who confirmed that there is an ongoing monitoring and maintenance programme in place for this. The CB has been advised to post an up to date photograph of the Annacotty lamprey pass on its website/ social media site. We do not have grounds to pursue this issue further. |
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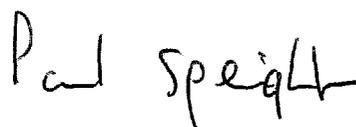
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| Complaint letter date: | 16-Feb-15 |
| Issue No: | 9 |
| Issue raised by complainant: | <i>“The non-native fish species Dace was previously confined to the lower reaches of the Mulkear River since it was illegally introduced in the 1990’s. However, since the removal of Ballyclogh Weir this fish species has penetrated upstream and is now invading the rest of the catchment. It is clear that this species was always going to make it upstream in this catchment. However, the prevention of Dace moving upstream was one of the reasons why Mulkear LIFE did not propose initially to install a rock ramp at Annacotty Weir.”</i> |
| Response from the Beneficiary: | <p>Dace is a small coarse fish species with a slim, round body and flat scales. Dace has been present below Annacotty Weir since the 1990’s when it was introduced illegally. It is not known who or how it was introduced. Inland Fisheries Ireland has received unverified reports of dace in the Mulkear Catchment since 2000. The then catchment manager and inspector for the area received these reports from anglers, although no fish was presented. However, during an ESB electrofishing survey carried out in September 2001, Dace were present on sites surveyed upstream of the Railway Bridge which is <u>upstream</u> of Annacotty and Ballyclogh Weir.</p> <p>Inland Fisheries Ireland believes that if dace can traverse the Annacotty Weir then it is not unreasonable to assume that dace can traverse Ballyclogh weir, which is the third barrier upstream and had an existing 8 meter breach in the weir for a number of years prior to Mulkear LIFE project commencing. The extreme floods that have been witnessed in 2012 and previous floods could have easily allowed for migration of various species past these barriers as they would have been completely immersed (photos supplied). Rainfall levels were almost 300% above normal and it was the wettest June on record. In September 2013, following reports of dace at Barringtons Bridge on the Killenagarriff River, Inland Fisheries Ireland carried out a survey to confirm the presence of dace at this site. 44 Dace of varying age classes were confirmed at this site.</p> <p>At no stage was there a consideration for a rock ramp at Annacotty Weir.</p> |

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| Assessment by the Commission services | The CB gives reasonable justification to conclude that the removal of Ballyclogh weir did not significantly exacerbate the spread of a non-native fish species which was already present upstream of the weir long before the project. We do not have grounds to pursue this issue further. |
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| Complaint letter date: | 16-Feb-15 |
| Issue No: | 10 |
| Issue raised by complainant: | <i>"We are also concerned that Mulkear LIFE and Inland Fisheries Ireland are now promoting this lamprey pass for use on other Irish rivers, in the absence of a supporting scientific assessment."</i> |
| Response from the Beneficiary: | Mulkear LIFE has achieved increased migration past the barriers that had a lamprey pass affixed and this can be seen in the sea lamprey monitoring post works results. The lamprey tiles were researched for development for specific sites on the Mulkear River SAC. Further monitoring would be required for the sites over the After LIFE period to assess the success rates for migration and improved population dispersal. |
| Assessment by the Commission services | The CB points out that the techniques were researched for development for specific sites on the Mulkear river. Post works monitoring results, which will continue into the AfterLIFE, show increased migration past the barriers. We do not possess any scientific information to conclude that the "lamprey passes" have not been effective or served its purpose. For this reason it is proposed not to pursue this issue further. |

In the light of the responses received from the Inland Fisheries Ireland, we have assessed your points and do not find confirmation that activities of Mulkear LIFE project have had a negative impact on the protected species of Lower Shannon SAC. Neither can we see any other issues that would constitute an infringement of EU environmental law. On the basis of our abovementioned conclusions, I cannot see grounds for further pursuing this complaint file and will propose to close it. Should you have any comments on this proposed course of action I would need to receive these within one month of your receipt of this letter.

Yours sincerely,



Paul Speight